



Supreme Court of the United States

October Term, 1975

75-1894
No. _____

UNITED MINE WORKERS OF AMERICA, an unincorporated association; DISTRICT 6, UNITED MINE WORKERS OF AMERICA, an unincorporated association; LOCAL UNION NO. 6362, UNITED MINE WORKERS OF AMERICA, an unincorporated labor association; JOHN GUZEK, individually and as President of District 6, United Mine Workers of America, ROBERT THORNTON, individually and as President of Local Union No. 6362, United Mine Workers of America; and WILBURT BOYNES, individually and as Vice-president of Local Union No. 6362, United Mine Workers of America,

Petitioners,

vs.

WINDSOR POWER HOUSE COAL COMPANY, a corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI To the United States Court of Appeals For the Fourth Circuit

John W. Cooper
Attorney For Petitioner
800 Main Street
Wellsburg, W.Va. 26070

PINSKY, MAHAN, BARNES,
WATSON, CUOMO & HINERMAN
Of Counsel

ERRATA SHEET

The following typographical errors are found in the Petition for Writ of Certiorari filed herewith:

1. The title paragraph, second line on page 8 should read "conflict" instead of "conflect."
2. The first paragraph, second line also on page 8 should read "anti-injunction" hyphenated, instead of "antiinjunction" together.
3. The first paragraph, fifth line also on page 8 should read "dilemma" instead of "dilemna."
4. The fourth paragraph, first line on page 9 should read "principles" instead of "principals."

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Prayer

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in this case February 3, 1976.

Opinions Below

The opinion of the United States Court of Appeals for the Fourth Circuit appears at 530 F. 2d 312, (1975) as well as in the Unofficial Slip Opinion which is reprinted at App. A, p. 1a-9a, *infra*. The order of the United States District Court for the Northern District of West Virginia entered April 22, 1975, holding the Petitioners in contempt of Court is appended at App. B, pages 10a-14a, *infra*. The order of the United States District Court for the Northern District of West Virginia granting a preliminary injunction to the Respondent against the Petitioners is appended hereto at App. C, pages 15a-19a, *infra*.

Jurisdiction

This Court has jurisdiction under 28 U.S.C. §1254 (1). The judgment of the United States Court of Appeals for the Fourth Circuit was entered on February 3, 1976. On April 26, 1976, Warren E. Burger, Chief Justice of this Court, granted Petitioners' Application and extended time for filing this Petition to and including July 1, 1976. (Order No. A-934)

Question Presented

Does a Federal District Court have jurisdiction and authority under §301 of the Labor-Management Relations Act to enjoin the members of one local union from honoring a "stranger" picket line at their employer's premises when said union and employer are parties to a binding collective bargaining agreement that contains an arbitration procedure and an implied "no-strike" pledge? Stated otherwise, does the refusal of a union to cross a "stranger" picket line create an arbitrable issue as contemplated by *Boys Markets vs. Retail Clerk's Local 770*, 390 U.S. 235 (1970).

Statutes Involved

This case involved §4, 8, and 9 of the *Norris-LaGuardia Act*, 29 U.S.C. §§104, 108 and 109 as well as §301 of the *Labor-Management Relations Act of 1947*, 29 U.S.C. §185 (a). These provisions are set forth at App. D. pages 19a - 21a, *infra*.

Statement of the Case

Federal Jurisdiction

The Windsor Power House Coal Company (hereinafter Windsor), Respondent, pursuant to §301 of the *Labor Management Relations Act*, brought this action against the United Mine Workers of America (International Union); District 6 of the United Mine Workers of America (District 6); Local Union 6362, United Mine Workers of America (Local) and various officers of the district and local unions for compensatory damages and injunctive relief as a result of the respective unions' alleged breach of an implied "no-strike" clause contained in the National Bituminous Coal Wage Agreement of 1974 to which all parties to this action are clearly bound.

Statement of Facts

On March 18, 1975, "stranger" or "roving" pickets appeared at the Windsor Power House Coal Company's Beech Bottom mine near Wellsburg, West Virginia. Although not identified it is clear that these pickets were not members of Local 6362, United Mine Workers of America, which represents the employees at the Beech Bottom mine. Work at the mine stopped when members of the local refused to cross this "stranger" picket line. The picketing was occasioned by a labor dispute between other coal companies and local unions not related to the Windsor operation.

On March 27, 1975, Windsor brought suit under §301 of the *Labor-Management Relations Act* as amended, 29 U.S.C. §185, against the International Union, District 6, Local Union 6362, and various officers of the district and

local union seeking damages as well as temporary and permanent injunctive relief as a result of the unions' breach of an implied "no-strike" obligation under the 1974 National Bituminous Coal Wage Agreement. The District Court for the Northern District of West Virginia entered a temporary restraining order on March 27, 1975, ordering termination of the existing work stoppage and requiring the union "[t]o honor the contract between the plaintiff and the [United Mine Workers] and return to work . . ." The order concluded:

It is further ORDERED that Windsor Power House Coal Company in accordance with the terms and conditions of the National Bituminous Coal Wage Agreement of 1974 shall arbitrate any grievance submitted by any member of the United Mine Workers employed at its Beech Bottom mine.

By order entered April 7, the temporary restraining order was extended until April 17, at 5 p.m.

The work stoppage continued in spite of the entry of the temporary restraining order, and on April 9 the Court ordered the Union to show cause why it should not be held in contempt for failing to obey the temporary restraining order. A hearing on both the show cause order and Windsor's motion for a preliminary injunction was begun on April 15. Extensive hearings were held, and on April 22 the district court entered orders on both matters. (App. B; App. C) (Oral orders were issued from the bench on April 17, 1975, holding the union Defendants and their officers in contempt of Court and also issuing a preliminary injunction.) There is no finding in the preliminary injunction order that the refusal of the members of Local 6362 to cross a "stranger" picket line created an arbitrable issue under the National Bituminous Coal Wage Agreement of 1974 (hereinafter Contract); however, the Court did observe from the bench that it felt the matter was an arbitrable issue.

Windsor and the Petitioners at all material times were parties to and governed by the Contract which is a valid collective bargaining agreement. The Contract provides a Settlement of Disputes procedure for many types of disputes ending in binding arbitration.¹ However, the contract is

¹ The jurisdictional section of that procedure provides as follows:
(Footnote continued on following page.)

silent as to whether honoring a "stranger" picket line is a difference between the union and the employer which is subject to arbitration. There is no express "no-strike" clause in the Contract although this Court in a similar provision in the 1971 Agreement has unequivocally recognized an implied "no-strike" clause. *Gateway Coal Co. vs. United Mine Workers of America*, 414 U.S. 368 (1974).

The various unions and their officers refused to file a grievance at any step of the proceedings below. The officers asserted that the refusal by the members of the Local 6362 to cross a "stranger" picket line did not create an arbitrable issue as contemplated by the Contract, and that, in large part, the refusal of the members to cross the picket line arose from fear of violence and personal harm. Accordingly, they contend that injunctive relief was not appropriate below because the mandatory requirements of *Boys Markets vs. Retail Clerk's Local 770*, 398 U.S. 235 (1970) had not been satisfied.

Proceedings Below

The Petitioners appealed the District Court's order issuing injunctive relief and, as well, its order holding the Petitioners in contempt of Court. On February 3, 1976, the United States Court of Appeals for the Fourth Circuit affirmed, in part, the orders of the District Court although a part of the contempt order was vacated and remanded. The Appeals Court decision is appended at App. A. 1a, *infra*.

Reasons for Granting the Writ

I. THE COURT BELOW DECIDED A FEDERAL

(Footnote continued from preceding page.)

ARTICLE XXIII

Section (c)

SETTLEMENT OF DISPUTES

Grievance Procedure

Should differences arise between the Mine Workers and the Employer as to meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time.

QUESTION IN DIRECT CONFLICT WITH THE DECISIONS OF OTHER COURTS OF APPEALS ON THE SAME QUESTION

A significant split among the Circuit courts of Appeals has arisen as a result of the issue presented in this case, to-wit, the refusal of sister unions to cross picket lines. In the Third, Fourth, Seventh and Eighth Circuits, the Courts have held that *any* strike in violation of a no-strike clause raises an issue of contract interpretation, namely, whether the strike violates the no-strike clause, and is, therefore, arbitrable. Apparently, these Courts treat the legality of the strike itself as a sufficiently arbitrable underlying dispute for the issuance of a *Boys Markets* injunction.³ On the other hand, other jurisdictions have concluded that the work stoppage (sympathy strike) must be *over* a grievance which both parties are contractually bound to arbitrate before a *Boys Markets* injunction may issue.⁴ These Courts reject the reasoning of the other Circuits on the ground that such a construction of *Boys Markets*⁵ would make every strike enjoined during the life of a collective bargaining agreement containing express or implied "no-strike" clauses. These Courts point out that the *Boys Markets* holding was a narrow one not intended to undermine the vitality of the anti-injunctive provisions of the *Norris-LaGuardia Act*.

² *Island Creek Coal Co. vs. United Mine Workers of America*, 507 F. 2d 650; *Armco Steel Corp. Vs. UMWA*, 4 Cir. 1974, 505 F. 2d 1129; *Pilot Freight Carriers Vs. Teamsters*, 4 Cir. 1974, 497 F. 2d 311, cert. denied, ___ U.S. ___, 95 S. Ct. 2665, 45 L. Ed. 2d 700; *Inland Steel Co. vs. UMWA*, 7 Cir. 1974, 505 F. 2d 293; *Valmac Industries, Inc. vs. Amalgamated Meat Cutters Local 425*, 8 Cir. July 29, 1975, 519 F. 2d 263, 89 L.R.R.M. 3073; *NAPA Pittsburgh, Inc. vs. Automotive Chauffeurs Local 926*, 3 Cir. 1974, 502 F. 2d 321 (en banc). But see *Parade Publications, Inc. vs. Philadelphia Mailers Union Local 14*, 3 Cir. 1972, 459 F. 2d 369, 374; *United States Steel Corp. vs. UMWA*, 3 Cir. 1972, 456 F. 2d 483, 487.

³ *Boys Markets, Inc., vs. Retail Clerk's Local Union 770*, 389 U.S. 235 (1970).

⁴ *Buffalo Forge Co. Vs. United Steelworkers*, 517 F. 2d 1207 (2nd Cir. 1975) (Petition for Writ Certiorari pending in this Court 75-3391); *U.S. Steel Corp. vs. UMWA*, 519 F. 2d 1236 (5th Cir. 1975); *Amstar Corp. vs. Amalgamated Meat Cutters*, 416 F. 2d 1372 (5th Cir. 1974).

⁵ *Boys Markets*, supra.

The Fifth Circuit Opinion in *United States Steel vs. UMWA*⁶ specifically recognizes the importance of the present issue:

"The issue over which there is the most controversy in the Boys Markets arena, and over which there is a division in the circuits, is the refusal of sister unions to cross picket lines."⁷

This conflict in the Circuits places a serious limitation upon the ability of federal courts to follow uniform guidelines with respect to the issuance or denial of *Boys Markets* injunctions. *Buffalo Forge Company* in its Petition for Writ Certiorari made the same observation:

"Clearly, the issue is a recurrent one affecting millions of workers and employers in each circuit of the nation. The extent of the disagreement among the circuits can be resolved only by this court."⁸

⁶ 519 F. 2d 1236, supra.

⁷ Id., at 1244, n. 15.

⁸ No. 75-3391 at 13.

II. THE COURT BELOW DECIDED A QUESTION OF
FEDERAL LABOR POLICY IN CONFLICT WITH
THIS COURT'S PREVIOUS DECISION IN *BOYS
MARKETS, INC., vs. RETAIL CLERK'S LOCAL*
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Boys Markets was an effort to judicially reconcile the antiinjunction provisions of §4 of the *Norris-LaGuardia Act*, 29 U.S.C. §104⁹ with the pro-injunction implementation of §301 (a) of the *Labor-Management Relations Act*, 29 U.S.C. §185¹⁰. The legal dilemma created by the two Congressional Acts reflected the historical evolution of the labor movement within this country in the 20th Century. *Norris-LaGuardia* was enacted to protect and insure the organizational rights of laborers whom Congress felt were at the mercy of their corporate employers (§2 *Norris-LaGuardia* - Public Policy defined). §4 of the Act was intended to protect individuals and developing labor organizations from potential governmental abuse through the reckless or arbitrary issuance of injunctions which might inhibit the various forms of collective bargaining.

With the development of labor came the growth of new forms of collective bargaining. Out of this growth came arbitration - the contractual right to have disputes between labor and management resolved by impartial umpire or referee. Through evolution of the labor movement, the machinery of arbitration would, in arbitrable disputes, become the judiciary of modern industry. Today §301 of the *Labor-Management Relations Act*, 1947,¹¹ is read as a codification of the power of Courts to enforce collective bargaining agreements. Prior to *Boys Markets*, however, the Courts generally held that the federal courts were precluded by the *Norris-LaGuardia Act* from enjoining a strike in breach of a no-strike provision of a collective bargaining agreement, even though such provisions would be otherwise enforceable under §301. *Sinclair Refining Co. vs. Atkinson*, 370 U.S. 195, 8 L. Ed. 2d 440, 82 S. Ct. 1328 (1962). *Boys Markets* expressly reversed *Sinclair*. Therein this Court

⁹§4 of the *Norris-LaGuardia Act* is found in App. D. p. 19a.

¹⁰§301 of the *Labor-Management Relations Act*, 29 U.S.C. is found in App. D., p. 20a.

¹¹ 29 U.S.C. §185

concluded that its ruling in *Sinclair* was inconsistent with the plethora of cases which favored peaceful settlement of labor disputes through arbitration.¹² Although favoring arbitration when the dispute between the parties may be susceptible to such coverage, it was apparent in *Boys Markets* there must first exist, between the parties, a dispute which may be arbitrated.

In *Boys Markets* this honorable Court observed that it had a duty to accommodate and reconcile the older statutes with more recent ones. *Norris-LaGuardia* was enacted in 1932; §301 of the *Labor-Management Relations Act*, in 1947. In reversing *Sinclair*, however, the Court cautioned that its ruling was not to be taken as a renunciation of *Norris-LaGuardia*. Rather, it was only a very limited exception to the proscriptions of §4. The remainder of the act remained intact:

"Our holding in the present case is a narrow one. We do not undermine the vitality of the *Norris-LaGuardia Act*. We deal only with the situation in which a collective bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance." *Boys Markets*, supra, L. Ed. 2d at 212.

The Court then adopted the principals enunciated in the dissent of *Sinclair* to serve as guidelines in ascertaining whether injunctive relief would be appropriate in future cases. Before enjoining a strike over a grievance a Court must first make a finding that the grievance in question is one which the parties are contractually bound to arbitrate:

"When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect . . ." Id at L. Ed. 2d 212.

The central issue in the instant case is whether the union's

¹²See e.g. *United Steelworkers of America vs. American Manufacturing Co.*, 363 U.S. 564, 4 L. Ed. 2d 1403, 80 S. Ct. 1343 (1960); *United Steelworkers of America vs. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 4 L. Ed. 2d 1409, 80 S. Ct. 1347 (1960); *United Steelworkers of America vs. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 4 L. Ed. 2d 1424, 80 S. Ct. 1358 (1960); *Textile Workers Unions vs. Lincoln Mills*, 353 U.S. 448, 1 L. Ed. 2d 972, 77 S. Ct. 912 (1957).

refusal to cross stranger picket lines created an arbitrable issue. The Petitioners respectfully submit that the Court below too broadly construed this Court's decision in *Boys Markets*. The work stoppage at issue in the instant case was not over a grievance of the mine workers with Windsor but instead was a manifestation of the Windsor employees' deference to the picket line set up by unrelated unions. Where a dispute is solely motivated by respect for "stranger" picket lines and plainly is not aimed at resolving an existing dispute with an employer by extra-arbitral means, there can be no injunctive relief under *Boys Markets*. As pointed out in *Buffalo Forge*, a strike "not seeking to pressure the employer to yield on a disputed issue is not an attempt to circumvent arbitration machinery established by the collective bargaining agreement. It does no violence to the federal pro-arbitration policy to require federal courts to refrain from enjoining such strikes."

The Fourth Circuit's holding in the instant case contains an extremely broad reading of *Boys Markets*. The rationale of this Circuit and the others of similar persuasion ignores the fact that no dispute whatsoever existed between the employer and its employees other than the fact that the employees were not working. Employees in these cases do not seek to exert economic leverage to obtain extracontractual benefits. Nor do they seek to resolve any disputes of any kind with their employer through extra-arbitral pressures. The employees here are merely exercising First Amendment Rights of expression of their sympathies with the plight of other unions in their disputes with their own employers.

Requiring the instant parties to submit such issues to arbitration is to render the *Norris-LaGuardia Act* impotent. Moreover, such a requirement clearly ignores the requirement in *Boys Markets* that an arbitrable dispute between the parties must exist before an injunction may issue. Because of the uncertainty and division within the circuits on this crucial labor issue, the guidelines and further decision of this Court are needed.

Conclusion

For the reasons stated above, this Petition for Writ

Certiorari should be granted.

Respectfully submitted,

John W. Cooper, Esquire
PINSKY, MAHAN, BARNES, WATSON,
CUOMO & HINERMAN
800 Main Street
Wellsburg, West Virginia 26070

Willard P. Owens, Esquire
United Mine Workers of America
900 15th Street, N.W.
Washington, D. C. 20005

1a

APPENDIX A

**UNITED STATES COURT OF APPEALS
For The Fourth Circuit**

No. 75-1611

Windsor Power House Coal
Company, a corporation,

Appellee,

versus

District 6 United Mine Workers
of America, an unincorporated
labor association,

Appellant,

and

United Mine Workers of
America, an unincorporated as-
sociation; Local 6362, United
Mine Workers of America, an
unincorporated labor associa-
tion; John Guzek, individually
and as president of District 6
United Mine Workers of
America; Robert Thornton,
individually and as president
of Local 6362 United Mine
Workers of America; and
Wilburt Boynes, individually
and as vice president of Local
6362 United Mine Workers
of America,

Defendants.

No. 75-1612

Windsor Power House Coal
Company, a corporation,

Appellee,

versus

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Appendix A.

United Mine Workers of
America, an unincorporated
association; District 6 United
Mine Workers of America, an
unincorporated labor associa-
tion; Local 6362 United Mine
Workers of America, an unin-
corporated labor association;
John Guzek, individually and as
president of District 6 United
Mine Workers of America;
Robert Thornton, individually
and as president of Local 6362
United Mine Workers of Amer-
ica; and Wilburt Boynes, indi-
vidually and as vice
president of Local 6362 United
Mine Workers of America,

Appellants.

Appeals from the United States District Court for the
Northern District of West Virginia, at Wheeling. Robert E.
Maxwell, District Judge.

Argued December 3, 1975

Decided February 3, 1976

Before HAYNSWORTH, Chief Judge, and CRAVEN and
WIDENER, Circuit Judges.

Charles E. DeBord, II, John W. Cooper, (Pinsky, Mahan,
Barnes, Watson, Cuomo and Hinerman on Brief) for
Appellants; Guy Farmer, (William A. Gershuny; Farmer,
Shibley, McGuinn and Flood; Herbert G. Underwood;
Steptoe and Johnson on brief) for Appellees.

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Appendix A.

CRAVEN, Circuit Judge:

On March 18, 1975, "roving" pickets appeared at Windsor Power House Coal Company's Beech Bottom mine. Although not identified, it is clear that they were not members of Local 6362 of the United Mine Workers (the Beech Bottom mine local). Work at the mine stopped when members of the Local refused to cross this "stranger" picket line.¹

On March 27, 1975, Windsor brought suit under Section 301 of the National Labor Relations Act, *as amended*, 29 U.S.C. § 185, against the International Union, District 6, Local 6362, and various officers of the District and Local Union (hereinafter Union), seeking damages and temporary and permanent injunctive relief as a result of the Union's breach of "no-strike" obligations under the 1974 National Bituminous Coal Wage Agreement. Judge Maxwell entered a temporary restraining order on the same day, ordering termination of the existing work stoppage and requiring the Union "[t]o honor the contract between the plaintiff and the [U.M.W.] and return to work" The order concluded:

It is further ORDERED that Windsor Power House Coal Company in accordance with the terms and conditions of the National Bituminous Coal Wage Agreement of 1974 shall arbitrate any grievance submitted by any member of the United Mine Workers employed at its Beech Bottom Mine.

By order entered April 7, the TRO was extended until April 17 at 5 p.m.

The work stoppage continued in spite of entry of the TRO, and on April 9 the court ordered the Union to show cause why it should not be held in contempt for failing to obey the temporary restraining order. A hearing on both the show cause order and Windsor's motion for a preliminary injunction was begun on April 15. Extensive hearings were held, and on April 17 the district court entered orders on both matters.

The contempt order² provided in relevant part:

¹ The picketing was occasioned by a labor dispute between another coal company and other locals and did not relate to the Windsor operation.

² Both the contempt order and the preliminary injunction were entered orally on April 17. These orders were reduced to writing and formally entered on April 22.

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Appendix A.

[If defendants] do not fully comply with the provisions of the temporary restraining order of March 27, 1975, and the extension thereof, on or before 8:01 a.m., on April 18, 1975, and return to work, said United Mine Workers of America is hereby ORDERED assessed the sum of \$10,000.00 for each and every shift of work missed at the Beech Bottom Mine of Windsor Power House Coal Company by reason of the strike or walkout thereat when work is scheduled and available at said mine; that District 6 United Mine Workers is hereby ORDERED assessed the sum of \$5,000.00 for each such shift on the identical conditions; and that Local 6362 is hereby ORDERED assessed the sum of \$100.00 per each such shift upon the identical conditions.

The preliminary injunction entered later on the same afternoon recited substantially the same terms as the TRO, except that the district court, apparently by inadvertence, failed to repeat the requirement that the company agree that all disputes be submitted to arbitration.⁴

The Union took this appeal from both the contempt order and preliminary injunction.

I.

The Preliminary Injunction

The basic issue presented in this appeal concerning the preliminary injunction is whether, under the rule of law laid down in *Boys Markets*,⁵ the refusal of the members of Local 6362 to cross a stranger picket line falls within the

³ App. 31-32. *See also* App. 303.

⁴ Under *Boys Markets, Inc. v. Retail Clerks Local 770*, 398 U.S. 235 (1970), the district court as a condition to granting any injunction must make a finding that the "strike" is "'over a grievance which both parties are contractually bound to arbitrate . . .'" *Id.* at 254. While the district court's preliminary injunction order does not contain such a finding, upon reviewing the record of the entire proceedings it is clear that he made such a finding. *See* App. 332-38.

Omitting the requirement that the company accede to arbitration is not significant in view of the finding and the company's willingness to arbitrate. *See Inland Steel Co. v. Mine Workers Local 1545*, 505 F. 2d 293, 300 (7th Cir. 1974).

⁵ *Boys Markets, Inc. v. Retail Clerks Local 770*, 398 U.S. 235 (1970).

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mandatory arbitration clause of its labor contract with Windsor and, as a result, is subject to injunction by the federal courts. We have held that the principle of *Boys Markets* may extend to such disputes, depending upon the contract's language. *Armco Steel Corp. v. United Mine Workers*, 505 F. 2d 1129 (4th Cir. 1974), *cert. denied*, 44 U.S.L.W. 3206 (U.S. Oct. 6, 1975); *Monongahela Power Co. v. Electrical Workers Local 2332*, 484 F.2d 1209 (4th Cir. 1973). See also *Island Creek Coal Co. v. United Mine Workers*, 507 F. 2d 650 (3rd Cir. 1975), *cert. denied*, 44 U.S.L.W. 3206 (U.S. Oct. 6, 1975); *NAPA Pittsburg, Inc. v. Automotive Chauffeurs Local 926*, 502 F. 2d 321 (3rd Cir.) (*en banc*), *cert. denied*, 419 U.S. 1049 (1974). But see *United States Steel Corp. v. United Mine Workers*, 519 F.2d 1236 (5th Cir. 1975); *Buffalo Forge Co. v. United Steelworkers*, 517 F.2d 1207 (2d Cir. 1975); Note, Injunctions--Federal Courts May Enjoin Work Stoppage When Its Legality Is Arbitrable Issue, 88 Harv. L. Rex. 463 (1974).

Furthermore, in *Armco Steel, supra*, we held that just such a failure to cross a stranger picket line was within the mandatory arbitration clause of the 1971 National Bituminous Coal Wage Agreement. See also *Island Creek, supra*. We have not found, and neither party to this appeal has suggested, any material difference between the relevant provision of the 1971 labor contract and a similar provision of the 1974 Agreement.⁶ We adhere to our prior decisions.

Secondly, the Union urges that the conduct of its members came within the "preservation of Individual Safety Rights" provision of the 1974 contract⁷ and that this clause is a

⁶ The jurisdictional language for arbitration cases in the 1974 Contract is found in Article XXIII § (c). It reads, in relevant part, as follows:

Should differences arise between the Mine Workers and the Employer as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time [in accordance with the Agreement's grievance-arbitration procedures].

⁷ Article III, Section (i) of the 1974 Agreement provides in pertinent part:
Section (i) Preservation of Individual Safety Rights

(Footnote continued on following page.)

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Appendix A.

specific exception to the implied no-strike provisions of the Agreement. We are inclined to think that the Preservation of Individual Safety Rights was designed and intended to establish a procedure for correcting dangerous working conditions in the mines and has nothing to do with picketing. It is true, as the Union suggests, that crossing a picket line may provoke violence. But that does not appear to be among the dangers for which the procedure was designed. We need not, however, decide the question because it is clear that the procedure established by the safety rights clause was not invoked here.

The "Preservation of Individual Safety Rights" provision of the labor agreement sets out a detailed procedure for

(Footnote continued from preceding page.)

(1) No Employee will be required to work under conditions he has reasonable grounds to believe to be abnormally and immediately dangerous to himself beyond the normal hazards inherent in the operation which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated. When an Employee in good faith believes that he is being required to work under such conditions he shall notify his supervisor of such belief. Unless there is a dispute between the Employee and management as to the existence of such condition, steps shall be taken immediately to correct or prevent exposure to such condition utilizing all necessary Employees, including the involved Employee.

(2) If the existence of such condition is disputed, the Employee shall have the right to be relieved from duty on the assignment in dispute. Management shall assign such Employee to other available work not involved in the dispute; and the Employee shall accept such assignment at the higher of the rate of the job from which he is relieved and the rate of the job to which he is assigned. The assignment of such alternative work shall not be used to discriminate against the Employee who expresses such belief. If the existence of such condition is disputed, at least one member of the Mine Health and Safety Committee shall review such condition with mine management within four (4) hours to determine whether it exists.

(4) For disputes not otherwise settled, a writted grievance may be filed, and the dispute shall be referred immediately to arbitration. Should it be determined by an arbitrator that an abnormally unsafe or abnormally unhealthy condition within the meaning of this section existed, the Employee shall be paid for all earnings he lost, if any, as a result of his removing himself from his job. In those instances where it has been determined by an arbitrator that an Employee did not act in good faith in exercising his rights under the provisions of this Agreement, he shall be subject to appropriate disciplinary action, subject, however, to his right to file and process a grievance.

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asserting such rights: (1) "When an Employee in good faith believes that he is being required to work under (abnormally and immediately dangerous) conditions he shall notify his supervisor of such belief." (2) If there is no dispute between the Employee and management as to the existence of the dangerous condition, "steps shall be taken immediately to correct or prevent exposure to such condition." (3) "If the condition is disputed, the Employee shall have the right to be relieved from duty on the assignment in dispute (and) . . . at least one member of the Mine Health and Safety Committee shall review such condition with mine management within four (4) hours to determine whether it exists." (4) "For disputes not otherwise settled, a written grievance may be filed, and the dispute shall be referred immediately to arbitration."

There is nothing in the record to indicate that any member of the Union ever invoked this provision by bringing the issue to the attention of Windsor in the manner required. Cf. *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368, 383-84 (1974). We, therefore, hold that the preliminary injunction issued properly.

II.

The Contempt Order

For purposes of this appeal, the effect of the contempt order is determinable by whether it is characterized as criminal or civil in nature. If it is criminal contempt, it is properly before us on appeal and must be reversed because the court failed to afford the Union the panoply of rights available to defendants in criminal proceedings. If it is civil contempt, it is not appealable "'except in connection with appeal from a final judgment in the main action.'" *Carbon Fuel Co. v. United Mine Workers*, 517 F.2d 1348, 1349 (4th Cir. 1975).

In *Carbon Fuel, supra*, we defined civil contempt as follows:

Civil contempt, on the one hand, is "'wholly remedial,' serves only the purpose of a party litigant, and is intended to coerce compliance with an order of the court or to compensate for losses or damages caused by noncompliance."

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517 F. 2d at 1349. This definition has two parts: (1) civil contempt is forward-looking, "terminable if the contemnor purges himself of the contempt" and (2) it is "compensatory" of any losses sustained by the (injured party) as a result of the contempt." *Id.* at 1349-50.

Clearly Judge Maxwell's order satisfied the first part of the test--it was prospective in application. The fine for contempt was to begin accruing only if workers did not return to work at the 8:01 a.m. shift on April 18, and it increased in amount only as each succeeding shift failed to resume work.

However, it is not clear that the court's order was intended to compensate Windsor for its losses as a result of the contempt. The total daily fines amounted to approximately \$45,000, and the record contains no "'evidence of complainant's actual loss'" which approached that figure.⁸ See *Carbon Fuel, supra* at 1350. Furthermore, the payment of the fine was to be made here to the clerk of court, not Windsor, which we specifically identified in *Carbon Fuel* as a characteristic of criminal contempt.

Windsor has represented to this court, both in its brief and at oral argument, that the contempt order is not final. It contends that in subsequent proceedings the fine's payment may be directed to Windsor and adjustment may be made in its amount to match the contemnor's conduct. We do not understand the Union to dispute these contentions. Accordingly, we hold that the court's order is civil in nature and presently not appealable.

On remand, the district court will treat its contempt order as tentative and, in an effort to balance all pertinent factors to achieve a fair and just result, will carefully consider both the actual damages incurred by Windsor during the period from entry of the contempt order until work was resumed

⁸ Windsor does not contend that it lost \$45,000 per day. Its claim is that the "amount of the Company's daily loss was established to be \$6,625.00 per day . . ." Brief for Appellee at 15.

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and the character of the efforts made by the Union and others to achieve compliance.⁹

**AFFIRMED IN PART,
VACATED, AND REMANDED.**

⁹We note that the district court previously characterized these efforts as "good faith affirmative action."

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

**WINDSOR POWER HOUSE COAL
COMPANY, a corporation,**

Plaintiff,

v.

Civil Action No. 75-8-W

**UNITED MINE WORKERS OF
AMERICA, an unincorporated
association; DISTRICT 6 UNI-
TED MINE WORKERS OF
AMERICA, an unincorporated
labor association; LOCAL 6362
UNITED MINE WORKERS OF
AMERICA, an unincorporated
labor association; JOHN GUZEK,
as President of District 6 United
Mine Workers of America;
ROBERT THORNTON, as Presi-
dent of Local 6362 United Mine
Workers of America; and
WILBURT BOYNES, as Vice-
President of Local 6362 United
Mine Workers of America,**

Defendants.

ORDER

On the 15th day of April, 1975, came the plaintiff, Windsor Power House Coal Company, by Herbert C. Underwood, its attorney; the defendants United Mine Workers of America, Local 6362 United Mine Workers of America, Robert Thornton and Wilburt Boynes by John Cooper and Charles DeBord, their attorneys; and the defendant District 6 United Mine Workers of America and John Guzek by H. John Rogers, their attorney, all pursuant

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to the Order of this Court entered on the 9th day of April, 1975, pursuant to a motion therefor by the plaintiff, whereby said defendants were required to show cause why they should not be adjudged in contempt of this Court by reason of their respective violations of the temporary restraining order entered in this Civil Action on the 27th day of March, 1975, and the order of this Court entered on the 7th day of April, 1975, whereby said temporary restraining order was extended for ten days pursuant to the provisions of Rule 65(b) of the Federal Rules of Civil Procedure.

It appearing to the Court that on the 27th day of March, 1975, the plaintiff caused to be filed in this Court its verified complaint seeking, among other matters, issuance of a temporary restraining order against the defendants herein; that pursuant to notice of said motion said defendants, by counsel, appeared in open court; that predicated upon affidavits filed by the plaintiff and testimony that day taken, this Court issued a temporary restraining order; that said order was extended prior to its expiration through 5:00 p.m., on the 17th day of April, 1975; that plaintiff's motion seeking an order requiring the defendants to show cause why they should not be adjudged in contempt of the order of this Court was duly filed, together with supporting affidavits, the Court proceeded to hear testimony upon the issues raised by the Order to Show Cause and the defendants' resistance thereto.

The testimony not being concluded on the 15th day of April, 1975, the parties and their attorneys returned to open court on the 16th day of April, 1975, and the Court continued to hear testimony upon the issues framed. Upon conclusion of the testimony and after hearing argument of counsel and reviewing the evidence presented, the Court reserved its decision until the 17th day of April, 1975, when, after due deliberation, the Court did find as follows:

1. The defendants United Mine Workers of America, District 6 United Mine Workers of America, Local 6362 United Mine Workers of America, John Guzek, as President of District 6 United Mine Workers of America, Robert Thornton, as President of Local 6362 United Mine Workers of America, and Wilburt Boynes, as Vice President of Local 6362 United Mine Workers of America, had full knowledge of the existence of said temporary restraining order and the terms thereof and the extension thereof and did in the

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Northern Judicial District of West Virginia knowingly and intentionally violate said temporary restraining order and the extension thereof, and did on diverse days beginning with March 27, 1975, and continuing thereafter with full knowledge of said temporary restraining order and the extension thereof did not terminate the strike or walkout at the plaintiff's Beech Bottom Mine; that its orders and directions given did not cause the members of defendant Local and others acting in concert with them to cease all picketing activities at the Beech Bottom Mine, and did not honor the contract between the plaintiff and the United Mine Workers of America and return and cause to return to work members of the United Mine Workers of America employed at the Beech Bottom Mine of the plaintiff.

2. Said United Mine Workers of America, District 6 United Mine Workers of America, Local 6362 United Mine Workers of America, John Guzek as President of District 6 United Mine Workers of America, Robert Thornton as President of Local 6362 United Mine Workers of America and Wilburt Boynes as Vice President of Local 6362 United Mine Workers of America, have failed to show why they should not be adjudged in contempt of this Court's temporary restraining order and the extension thereof.

3. That the defendants international and district took good faith affirmative action at mines owned and operated by other than the plaintiff herein, both in Ohio and West Virginia, in an effort to resolve the dispute between various locals and the mine owners, but such efforts did not terminate the work stoppage at plaintiff's Beech Bottom Mine.

It is therefor ADJUDGED AND ORDERED that the defendants, United Mine Workers of America, District 6 United Mine Workers of America, Local 6362 United Mine Workers of America, John Guzek as President of District 6 United Mine Workers of America, Robert Thornton as President of Local 6362 United Mine Workers of America and Wilburt Boynes as Vice President of Local 6362 United Mine Workers of America, are and have been in contempt of this Court for having failed and refused to obey the temporary restraining order issued by this Court on the 27th day of March, 1975, and the extension thereof.

It appearing to the Court that the interests of the parties

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hereto can best be served by prospective application of any sanctions resulting from said contempt, it is hereby ORDERED that in the event said United Mine Workers of America, District 6 United Mine Workers of America, Local 6362 United Mine Workers of America, John Guzek as President of District 6 United Mine Workers of America, Robert Thornton as President of Local 6362 United Mine Workers of America and Wilburt Boynes as Vice President of Local 6362 United Mine Workers of America, do not fully comply with the provisions of the temporary restraining order of March 27, 1975, and the extension thereof, on or before 8:01 a.m., on April 18, 1975, and return to work, said United Mine Workers of America is hereby ORDERED assessed the sum of \$10,000.00 for each and every shift of work missed at the Beech Bottom Mine of Windsor Power House Coal Company by reason of the strike or walkout threat when work is scheduled and available at said mine; that District 6 United Mine Workers is hereby ORDERED assessed the sum of \$5,000.00 for each such shift on the identical conditions; and that Local 6362 is hereby ORDERED assessed the sum of \$100.00 per each such shift upon the identical conditions.

It is further ORDERED that the defendants Robert Thornton and Wilburt Boynes as President and Vice President, respectively, of Local 6362 United Mine Workers of America, are required to appear and work their regularly scheduled shifts at plaintiff's Beech Bottom Mine, and in the event they do not do so, they are hereby ORDERED assessed the sum of \$50.00 for each and every shift so missed following 8:01 a.m. on April 18, 1975.

If said Thornton and Boynes do not so work by reason of their failure or refusal to cross any picket line at the Beech Bottom Mine of the plaintiff, when they are regularly scheduled to work during the effective period of this Court's order entered on the 22nd day of April, 1975 and effective on the 17th day of April, 1975, granting to the plaintiff a preliminary injunction, the Court will not, in a punitive fashion, compel them, or either of them, to cross such picket line, but it shall be the responsibility of said defendants Thornton and Boynes, in purging themselves of contempt of this Court's order, to come forward and identify such pickets as may be preventing them, or either of them, from carrying

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out the order of this Court.

To the above adverse findings and orders all the defendants object.

Insofar as the motion of the plaintiff sought an Order to Show Cause from Andrew Morris, there is a total failure of any evidence demonstrating any contemptuous conduct on the part of Andrew Morris, and he is ORDERED dismissed from this civil action.

Dated: April 22, 1975

Robert E. Maxwell
United States District Judge

Approved:

Herbert Underwood
Attorney for Plaintiff

Approved as to Form Only:

John W. Cooper
Charles E. DeBord II
Attorneys for Defendants

APPENDIX C**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

WINDSOR POWER HOUSE
COAL COMPANY, a corporation,
Plaintiff,

v.

Civil Action No. 75-8-W

UNITED MINE WORKERS OF
AMERICA, an unincorporated
association; DISTRICT 6 UNI-
TED MINE WORKERS OF AM-
ERICA, unincorporated labor as-
sociation; LOCAL 6362 UNITED
MINE WORKERS OF AMER-
ICA, an unincorporated labor as-
sociation; JOHN GUZEK, as
president, of District 6 United
Mine Workers of America;
ROBERT THORNTON, as presi-
dent of Local 6362 United Mine
Workers of America; and
WILBURT BOYNES, as vice president of
Local 6362 United Mine Workers
of America,

Defendants.

ORDER

On the 17th day of April, 1975, came the plaintiff by Herbert C. Underwood its attorney of record and came the defendants by John Cooper and Charles DeBord, pursuant to the orders of this Court made and entered on the 27th day of March, 1975, and the 7th day of April, 1975, setting plaintiff's motion for a preliminary injunction for hearing on this date.

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The Court has considered the verified complaint and the motion for a preliminary injunction incorporated therein filed by the plaintiff; the affidavits in support thereof; the testimony adduced by the parties plaintiff and defendant in open court and the exhibits filed throughout the course of this civil action including all of the evidence adduced by reason of the plaintiff's motion for an order requiring the defendants to show cause why they should not be held in contempt of the temporary restraining order entered by this Court.

The Court is of the opinion upon all of the foregoing that it has been clearly shown that the plaintiff will suffer irreparable damage if a preliminary injunction is not awarded herein, by reason of the following facts:

(a) plaintiff's present inability to proceed with the mining and production of coal at its Beech Bottom Mine will result in an irreparable loss to it not compensable by the payment of the damages.

(b) The plaintiff will be unable to meet its contractual commitments for the delivery of coal for the generation of electrical energy.

(c) Continuation of the strike or walkout will result in an irrevocable loss to the plaintiff of a sum in excess of \$25,000.00 each day.

(d) The inability, in the face of the walkout or strike, of the plaintiff to meet its contractual commitments for the delivery of bituminous coal may exacerbate the presently existing electrical energy shortage in the Eastern United States, with a consequent increase in the inconvenience and discomfort of the citizens of these states by reason of such power shortage.

By reason of the foregoing, the Court is of the opinion that the issuance of a preliminary injunction is appropriate, and it is hereby ORDERED that a preliminary injunction issue against United Mine Workers of America; District 6 United Mine Workers of America; Local 6362 United Mine Workers of America; John Guzek, as president of District 6 United Mine Workers of America; Robert Thornton, as president of Local 6362 United Workers of America, and Wilburt Boynes, as vice president of Local 6362 United Mine Workers of America, and each of them, and all other members of defendant Local, and all other persons in active concert or

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participation with said Local, and its agents, and they are hereby ORDERED and directed, until further order of this Court, as follows:

1. To terminate immediately the strike or walkout which began on March 18, 1975, and continues to the present time at the Beech Bottom Mine of Windsor Power House Coal Company, located in Ohio and Brooke Counties of West Virginia.

2. To terminate the present strike or walkout and order or direct the members of the defendant Local, and all others acting in concert with them, to cease all picketing activity at the Beech Bottom Mine.

3. That the defendants, and each of them, and all members of the Local and those acting in concert with them, who receive actual notice hereof, refrain from ordering, calling, directing, encouraging, maintaining or participating in the strike and walkout and picketing at the Beech Bottom Mine until the further order of this Court.

4. To honor the contract between the plaintiff and the United Mine Workers of America and return to work at the Beech Bottom Mine of Windsor Power House Coal Company.

It is further ORDERED that this preliminary injunction shall not take effect until the plaintiff, or some person or persons in its behalf, executes before the Clerk of this Court a bond in the penalty of \$10,000.00, conditioned to pay such costs as may be awarded against the plaintiff and such damages as may be sustained by the defendants, or any one of them, in case the preliminary injunction herein awarded shall hereafter be dissolved.

It is further ORDERED that service of a copy of this order, duly certified by the Clerk of this Court, upon the attorneys of record for the defendants and posting of a duly certified copy thereof at the entrances to the Beech Bottom Mine and in close proximity shall constitute notice to the defendants, and all persons aiding, abetting or acting in concert with them, of the award of this preliminary injunction and of the requirements thereof.

To the above adverse findings and orders all the defendants object.

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Entered: April 22, 1975

Robert E. Maxwell
United States District Judge

Approved:

Herbert G. Underwood
Attorney for Plaintiff

Approved as to Form Only:

Charles E. DeBord II
John W. Cooper
Attorneys for Defendants

APPENDIX D**Norris-LaGuardia Act §4
Title 29 U.S.C. §104****§ 104. Enumeration of specific acts not subject to restraining orders or injunctions**

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

*Appendix D.***Norris-LaGuardia Act §8
Title 29 U.S.C. §108****§ 108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief**

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

**Norris-LaGuardia Act §9
Title 29 U.S.C. §109****§ 109. Granting of restraining order or injunction as dependent on previous findings of fact; limitation on prohibitions included in restraining orders and injunctions**

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter.

**Labor Management Relations Act of 1947 §301
Title 29 U.S.C. §185****§ 185. Suits by and against labor organizations - Venue, amount, and citizenship**

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an

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industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

**Responsibility for acts of agent; entity for purposes of suit;
enforcement of money judgments**

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Supreme Court, U. S.
FILED

AUG 18 1976

MICHAEL RODAY, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

—
No. 75-1894
—

UNITED MINE WORKERS OF AMERICA, ET AL.,
Petitioners,

v.

WINDSOR POWER HOUSE COAL COMPANY,
Respondent.

—
On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit
—

BRIEF FOR RESPONDENT WINDSOR POWER
HOUSE COAL COMPANY IN SUPPORT
—

ROGER SCHNAPP
Two Broadway
New York, New York 10004
*Attorney for Windsor Power
House Coal Co.*

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IN THE
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WINDSOR POWER HOUSE COAL COMPANY,
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On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit

**BRIEF FOR RESPONDENT WINDSOR POWER
HOUSE COAL COMPANY IN SUPPORT**

Windsor Power House Coal Company (herein called "Windsor Power"), respondent herein, joins Petitioners in urging that the Court review the decision of the lower court. Windsor Power joins in the Petition for a Writ because Windsor Power strongly believes that the Court must, in the interest of all parties, clarify and distinguish the impact and application of its recent decision in *Buffalo Forge*, — U.S. —, 96 S.Ct. 3141 (1976), on the "wildcat" strikes in the coal industry which have been a common occurrence and have escalated disastrously since the *Buffalo Forge* decision.

Windsor Power submits that it is essential to the prevention of chaos in the coal industry that the Court, using this case as the most convenient vehicle, quickly lay to rest the opinion, now prevalent among members of the United Mine Workers of America (herein called "UMWA"), and some lower courts, that *Buffalo Forge* legalized wildcat strikes and gave any dissident minority group of coal miners a license to shut down the coal mines at will over disputes which are clearly arbitrable under the National Bituminous Coal Wage Agreement.

The coal miners, their legal counsel, and even some U.S. District Court Judges, have overreacted to *Buffalo Forge* and have, in effect, construed it as overruling *Boys Markets*, 398 U.S. 235 (1970), or at least to have so severely restricted that decision as to make it almost totally inoperative.

Windsor Power submits that there are significant and controlling differences between the type of sympathy strike which the Court held unenjoinable in *Buffalo Forge* and the "wildcat" strikes in the coal industry which are typified by this case. Windsor Power believes that the Court, upon examination and comparison of the two different situations presented, will agree that *Boys Markets* is still applicable and available as a remedy against wildcat strikes of the kind prevalent in the coal industry.

The hard truth is that, unless the law provides a judicial remedy, the coal industry, the coal miners' union, the coal miners and their families, the miners and pensioners and widows' pension and health and medical funds, and the public at large will be put at the mercy of small bands of willful men who by the use of roving pickets can shut down the entire coal industry and keep it down so long as it suits their purposes.

Litigation arising out of a current widespread wildcat strike is in progress, but is not ripe for submission to this Court. This Windsor Power case, arising out of an earlier strike, therefore, is the only case known to Windsor Power which can provide a test case for most expeditiously determining the state of the law as it applies to recurring and widespread wildcat strikes in the coal industry.

QUESTION PRESENTED

Windsor Power does not agree entirely with Petitioners' statement of the question presented. Windsor Power submits that the question presented is:

Do the federal courts have jurisdiction under Section 301 of the Labor-Management Act and under *Boys Markets* and *Buffalo Forge* to enjoin members of a local union from refusing to work where "stranger" pickets appeared at a mine of Windsor Power and:

1. Where the "stranger" pickets were not identified, but the picketing was occasioned by an arbitrable dispute between another coal company and other local unions of the UMWA;
2. Where the strikers did not claim they were striking out of "sympathy" for the other locals, but rather claimed that they did not know who the pickets were or why they were picketing and also claimed that this failure to work was caused by "fear of violence and personal harm" (Petition for Certiorari, p. 5); and
3. Where all of the companies and all of the local unions and UMWA members involved were mem-

bers of a single, multi-employer unit and parties to a single multi-employer agreement between the Bituminous Coal Operators' Association (herein "BCOA") and the UMWA containing an unusually broad arbitration clause and, therefore, all union members had a direct interest in the outcome of the dispute.

STATEMENT OF THE CASE

On March 18, 1975, "roving", "stranger" pickets showed up at the Beech Bottom Mine of Windsor Power House Coal Company. Work at the mine stopped when the members of the local union refused to work in the face of these "stranger" pickets.

The pickets were never identified, but the lower court found that the picketing was occasioned by a labor dispute between another coal company and other locals of the UMWA. One union witness testified that he thought that the pickets were college students. The company at which the dispute arose was North American Coal Corporation (herein called "North American"), and the dispute was over the interpretation of the "Helper" provision in the 1974 National Bituminous Coal Wage Agreement. Both Windsor Power and North American are parties to the National Agreement, as are all local unions involved. The "Helper" clause applied to all BCOA companies, all local unions, and all UMWA members. This is so because the National Agreement is made by the International Union on behalf of all its members. The employees at the Beech Bottom Mine at no time claimed any sympathy with the pickets. They denied knowing the pickets' identity, and claimed only that they refrained from work in fear of violence and physical harm.

The Federal District Court in Northern West Virginia issued a temporary restraining order and later a preliminary injunction. The union parties refused to obey the injunction and were held in contempt. The case was appealed by the union to the Fourth Circuit Court of Appeals which sustained the preliminary injunction, but refused to review the contempt finding on the ground that it was civil, not criminal, and, therefore, was not final and reviewable at that stage.

The UMWA has petitioned for a Writ of Certiorari. Windsor Power joins in this Petition.

REASONS FOR GRANTING THE WRIT

A. The Writ Should Be Granted Because the Issue Is One of Great National Importance and There Is a Clear and Present Necessity to Clarify the Law Applicable to Wildcat Strikes in the Industry.

The coal industry has long been plagued by wildcat strikes, but with the advent of the *Boys Markets* decision in 1970, the Court made available a judicial remedy that was utilized by the courts to keep these recurring illegal strikes somewhat in check, and at least to impede their spread and to shorten their lives.

Buffalo Forge was decided on July 6, 1976. Almost immediately thereafter, a rash of wildcat strikes broke out in the coal industry, idling more than 100,000 miners. This strike is still in progress. These wildcats will recur, and with increasing frequency, unless and until they are brought within the reach of the processes of law.

The National Agreement contains, as this Court noted in *Gateway Coal*, 414 U.S. 368 (1974), an unusually broad grievance-arbitration clause which can be

invoked when there is any dispute over the meaning of the contract or over "any local trouble of any kind".

That grievance-arbitration procedure is being subverted and undermined on a massive scale. We respectfully suggest that the Court should reaffirm its support of the peaceful settlement of disputes by the arbitration procedures which were mutually agreed upon by the parties, and thus help restore orderly processes rather than the law of the jungle to the coal fields.

B. Boys Markets and Not Buffalo Forge Governs the Typical Wildcat Strike in the Coal Industry.

The wildcat strike in *Windsor Power* bears no resemblance to the sympathy strike in *Buffalo Forge*. There are several controlling differences between this case and *Buffalo Forge*.

1. The underlying dispute here, unlike Buffalo Forge, was arbitrable.

In *Buffalo Forge*, one local union was engaged in a legal, primary strike and in picketing of the employer over the negotiation of a labor agreement. A sister local of the same International, in a separate bargaining unit with a separate agreement, at the direction of the International went out on strike in sympathy with the striking union. The primary strike and picketing by the first local was lawful because it was in pursuance of a negotiated agreement. There was no underlying arbitrable dispute of any kind. Therefore, the Court majority in *Buffalo Forge* held that *Boys Markets* could not apply because there was no arbitrable dispute except the question of the legality of the sympathy strike itself. The sympathy strike could not have "the purpose nor the effect of denying or evading an obligation

to arbitrate" because the "underlying issue" in *Buffalo Forge* was not arbitrable. The "underlying issue" was, of course, the terms of a new agreement between the first union and the employer, and this dispute was clearly not arbitrable.

In this *Windsor Power* case, as in the typical wildcat strike in the coal industry, the original strike (at North American Coal over the interpretation of the "Helper" clause of the National Agreement) was clearly arbitrable, and, therefore, the "underlying issue" was an arbitrable one. As such, it was enjoinable under *Boys Markets*, and *Buffalo Forge* does not change that. The "stranger" picketing was merely an extension of, and in aid of, the original, precipitating, enjoinable strike. Participation in such an enjoinable strike must itself be enjoinable to avoid a totally unacceptable and illogical result.

If *Windsor Power* should be held to be governed by *Buffalo Forge*, it would mean that those who strike over an arbitrable grievance (strikers at North American Coal) could be enjoined under *Boys Markets*, but those locals who strike in alleged "sympathy" with North American's enjoinable strike would be free of judicial restraint. The law could not countenance such an illogical and inequitable distinction.

2. This is not a sympathy strike.

Buffalo Forge presented a case of a classic sympathy strike. There were two sister locals representing two separate employee bargaining units under two separate agreements, one in being and the other being negotiated. One local was engaged in a legal strike. The International Union directed the other local to cease work in sympathy—to lend moral and demonstrable

support to the legal, primary strike. The second local did so knowingly and purposely to show its sympathy and support. Here, the strike was unauthorized by the International, and the local union and its members at the Beech Bottom Mine did not, so far as the record shows, strike in sympathy with another UMWA local or anyone else. The employees at the Beech Bottom Mine did not know what the dispute was about or try to find out. The pickets did not identify themselves and were not identified.

In order to be a sympathy strike, the "sympathy" strikers must know who the original strikers are and what their cause is, and must be in sympathy with it. Here none of these elements were present. This alone make *Buffalo Forge* inapplicable.

The strikers, or some of them, stated they ceased work out of fear of violence or physical harm. If that were the case, this would in itself have presented an arbitrable safety dispute under the *Gateway Coal* decision. But, the crucial point made here is that this was not a sympathy strike, and for that reason alone *Buffalo Forge* cannot be said to be controlling.

3. All local unions here involved had a common and direct interest in the underlying dispute.

Apart from the reasons stated above, there is another basic difference between this case and that of *Buffalo Forge*. Even if we assume that the Beech Bottom local was indeed striking in support of the North American locals over the "Helper" issue, the Beech Bottom strike cannot qualify as a protected sympathy strike. This is because the Beech Bottom local had a common and direct interest, not merely a sympathetic concern, with the underlying arbitrable dispute. As

Justice Stevens said in *Buffalo Forge*, "... a sympathy strike does not directly further the economic interests of the members of the striking local or contribute to the resolution of any dispute between that local, or its members and the employer." Slip Opinion, p. 17. Therefore, in the true sympathy strike, the sympathetic union has no direct interest in the underlying dispute.

In *United Mine Workers*, 179 NLRB 479 (1969), the NLRB specifically held that BCOA "*constitutes a single multi-employer bargaining unit.*"

Therefore, Windsor Power and North American, and all other members of BCOA, are a part of a single, multi-employer bargaining unit. The employers in this single unit have a single national agreement negotiated between BCOA and the UMWA, which is binding alike on all the employers, all the local unions and all the UMWA members employed by BCOA companies. All locals and all Union members have a common interest in the national agreement and in its interpretation and enforcement. There is thus a complete parity and unity of interest in the terms of the national agreement and in its uniform interpretation.

Therefore, unlike *Buffalo Forge* all of the UMWA members engaged in the wildcat strike stemming from the original arbitrable dispute were part of the same indivisible bargaining unit in which the dispute arose. The strike by the Beech Bottom local was not a sympathy strike over issues outside its bargaining relationship. It was a strike engaged in jointly with all other striking UMWA locals within the single bargaining unit over the meaning of a common provision of their common national agreement. Therefore, all had a

common and direct interest in the outcome of the dispute, whether resolved through arbitration or by the use of economic force. Claiming to be striking in so-called "sympathy" under these circumstances is a misnomer tending to obscure the direct interest of all UMWA members in the *underlying* arbitrable dispute. The act of the Beech Bottom local in joining in the strike was, therefore, in contravention of the "driving force" behind *Boys Markets*—"the implementation of the strong Congressional preference for the private disputes settlement mechanisms agreed upon by the parties." The spreading of the strike simply escalated the assault on the arbitration process. It was, therefore, a direct strike over an arbitrable dispute which interfered with and frustrated the arbitration process by which the parties had agreed to settle disputes. *Buffalo Forge*, Slip Opinion, p. 9. This is a classic *Boys Markets*, not a *Buffalo Forge* case.

CONCLUSION

Because of the question being raised as to the application of *Buffalo Forge* to wildcat strikes in the coal industry, we join in urging the Court to clarify the law on this issue which is one of national importance, the clarification of which is one of utmost urgency.

Respectfully submitted,

ROGER SCHNAPP
Two Broadway
New York, New York 10004
*Attorney for Windsor Power
House Coal Co.*

Supreme Court, U. S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1894

UNITED MINE WORKERS OF AMERICA, ET AL.,
Petitioners,

v.

WINDSOR POWER HOUSE COAL COMPANY,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

**MOTION FOR LEAVE TO FILE BRIEF
AND BRIEF OF THE BITUMINOUS COAL
OPERATORS' ASSOCIATION, INC.,
AMICUS CURIAE**

GUY FARMER

Farmer, Shibley, McGuinn & Flood
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

*Attorney for Bituminous Coal
Operators' Association, Inc.*

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On Petition for a Writ of Certiorari
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for the Fourth Circuit

**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE**

The Bituminous Coal Operators' Association, Inc., herein called "BCOA", not having received consent of the Petitioner, hereby requests leave of the Court to file the enclosed Brief, *Amicus Curiae*, in the above case.

**BCOA'S INTEREST AND WHY THE
FILING IS DESIRABLE**

BCOA is a national association of bituminous coal producers, organized in 1950 and continuing in being until the present time. BCOA has approximately 50

direct members and some local coal association members, including the major coal producers in all of the bituminous coal mining states. Its members produce about 75 percent of the coal mined under the National Bituminous Coal Wage Agreement. BCOA negotiates and assists in interpreting this Agreement.

BCOA was organized for the purpose of attempting to help bring stability out of chaos in employer-employee relations in the coal industry. These efforts have been successful to a large degree, but the continued increase in the incidence and magnitude of wildcat strikes in recent years has presented an imminent threat to the production of coal and to the stability of employment in the coal industry.

This case is before the Court on a Petition for a Writ of Certiorari by the United Mine Workers of America, and Respondent, Windsor Power House Coal Company, will file on this date a Response joining in the request for the Writ. If the Writ is issued, the decision should establish legal guidelines to determine the application of the recent *Buffalo Forge* decision, — U.S. —, 96 S.Ct. 3141 (1976), to the recurring wildcat strikes in the coal industry. This will have substantial and even crucial impact on the effectiveness and integrity of the agreements between BCOA and the United Mine Workers of America, and on the ability of the bituminous coal industry to meet the Nation's need for coal.

BCOA's members have over a period of years felt the costly impact of recurring wildcat strikes, some affecting virtually the entire industry. Miners, widows, and pensioners have also suffered great losses. The industry has just completed a four-week wildcat

strike which had idled over 100,000 coal miners in all the bituminous coal producing states.

All BCOA members will be affected by the decision of this Court.

WHEREFORE, BCOA moves the Court to allow the filing of the Brief, *Amicus Curiae*, which is submitted herein with the requisite number of printed copies.

Respectfully submitted,

GUY FARMER

Farmer, Shibley, McGuinn & Flood
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

*Attorney for Bituminous Coal
Operators' Association, Inc.*

August 18, 1976

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

—
No. 75-1894
—

UNITED MINE WORKERS OF AMERICA, ET AL.,
Petitioners,

v.

WINDSOR POWER HOUSE COAL COMPANY,
Respondent.

—
On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit
—

BRIEF AMICUS CURIAE
OF BITUMINOUS COAL OPERATORS', INC.

—
BCOA'S INTEREST

The Bituminous Coal Operators' Association, Inc., herein called "BCOA", is a national association of coal operators, organized in 1950 for the purpose of negotiating and assisting in interpreting BCOA's national agreements with the United Mine Workers of America, herein called "UMWA." BCOA has approximately 50 members who operate in all of the bituminous coal mining states and who collectively produce approximately 75 percent of the bituminous coal mined under the National Bituminous Coal Wage Agreement of 1974, herein called the "1974 Agreement."

BCOA was formed against the backdrop of the labor strife in the coal industry during the 1940's, a period characterized by strikes and Government seizures of the coal mines. BCOA's purpose was to create more stable labor relations and to establish and maintain harmonious relationships between the coal operators and their employees and their employee representative, the UMWA. These efforts were successful in that since the early 1950's a succession of national labor agreements have been negotiated between BCOA and the UMWA without any seriously prolonged or crippling economic strikes. However, during recent years, particularly from 1974 to the present, escalating wildcat strikes are threatening to create labor chaos in the coal industry.

The latest contract renewal was the 1974 Agreement which became effective in December 1974 to run for a three-year period. This Agreement was hailed as one of the most progressive labor agreements ever negotiated. It provides for wage and benefit levels which are at least as beneficial to the miners as those in any other industry. It also contains provisions for the handling of grievances and for various types of expedited arbitration over a broad range of issues. All local grievances, disputes or local trouble of any kind is subject to final and binding settlement through the grievance-arbitration procedures of the Agreement. There is no labor agreement of record that contains any broader grievance-arbitration clause.

The provisions for grievance handling and arbitration in the 1974 Agreement are not moribund. They are alive and functioning. Since September 1975, over 2,000 grievances have been submitted to arbitration

under the Agreement. This is in contrast to earlier years when about 600 to 700 grievances were arbitrated each year. The grievance-arbitration procedures are equitable and readily available to the miners, and they are being used by the vast majority of the coal miners. One new feature of the arbitration process added in 1974 was the provision for a National Arbitration Review Board established for the purpose of reconciling conflicts in panel arbitrator decisions and for bringing about uniformity in the interpretation of the National Agreement.

But, unfortunately, there are a few coal miners who from time to time take the law in their own hands and engage in and foster wildcat strikes over an arbitrable local grievance or dispute. These local strikes are sometimes escalated into a widespread national wildcat strike. Such escalation is normally accomplished by roving "stranger" pickets.

Despite the bright promise of the 1974 Agreement, labor stability in the coal industry has steadily worsened since that Agreement was signed. There were more wildcat strikes in the bituminous coal industry in 1975 than ever before in history, and 1976 will be the worst year yet. In 1975, approximately 16 million tons of production were lost due to wildcat strikes; the miners' health and benefit funds lost approximately 22 million dollars in revenue; coal miners lost approximately 79 million dollars in wages; and the ability of the bituminous coal industry to meet the nation's increasing fuel requirements was, and continues to be, placed in jeopardy.

As this brief is being written, there is a wildcat strike in progress going into its fourth week, engulf-

ing all or part of the major coal producing states. It is estimated that over 100,000 coal miners have been idled by this wildcat strike which started at a single mine in West Virginia because of a dispute over the classification of one job.

This local dispute was over a clearly arbitrable issue, and was in fact arbitrated. Yet it has been the precipitating cause of the shutdown of about two-thirds of the total national production of bituminous coal. It has already inflicted severe losses on the coal miners, the coal industry, the Benefit and Pension Funds, the coal communities, the coal states, and the Nation.

Apart from the other astronomical economic losses arising from these wildcat strikes, they pose an imminent threat to the pension and health benefits of the active miners and the 80,000 pensioners.

In the 1974 Agreement, the mine operators agreed to double their contributions to these Trust Funds and dramatically increased the pensions both for present pensioners and for the future pensions of active miners. The health and medical benefits plans in the bituminous coal industry are among the most liberal in the Nation.

But, the contributions to these Trust Funds by employers are based on a combination of tons of production and cents per hour for hours actually worked. Consequently, their financial stability has been threatened by the rising level of wildcat strikes to the point where the two 1950 Trusts (the Pension Trust and the Benefit Trust for Retired Miners) are already in serious trouble. The 1950 Benefit Trust is now bankrupt, and the 1950 Pension Trust is running a deficit.

The Board of Trustees, the Chairman of which is appointed by the UMWA, on four occasions has issued public statements giving warning of the damage to the Trust Funds arising from the recurring incidence of wildcats. In a release, dated July 30, the Trustees state that the 1950 Benefit Trust (providing benefits for retired miners) is operating at a deficit and has no financial reserves. It also states that the loss to the Trusts arising from the current strike is estimated at \$800,000 per day. This has since risen to 1.2 million dollars a day.

BCOA and its members have a grave and continuing interest in preserving the integrity of the periodic agreements negotiated with the UMWA. BCOA and its members also have a grave and continuing interest in preserving the grievance-arbitration procedures of those agreements and in maintaining employment stability and production in the bituminous coal industry. BCOA and its members have a similar direct interest in the stability of the Pension and Benefit Trusts. BCOA believes that these interests should be shared by the UMWA and its members and constituent bodies throughout the industry; and finally, the threat which wildcat strikes present to these interests should be the concern of the public as well.

Recurring and escalating wildcat strikes, to our knowledge, are rare in other industries, but are a serious and mounting threat to the stability of the coal industry.

BCOA is dedicated to encouraging the use of the grievance-arbitration procedures of the 1974 Agreement to settle disputes, and generally these procedures are being used. BCOA knows of no instance

where a mine operator has failed or refused to arbitrate a local dispute of any kind. The problem of the wildcat strike arises where a few strong-willed men for reasons known only to them flaunt these procedures, and engage in spreading wildcat strikes.

These wildcat strikes are usually spread by roving, or "stranger", pickets. In the normal case, as is true here, these "stranger" pickets conceal their identities. They are aided in their destructive conspiracy by the tradition of UMWA members to cease work whenever a picket or pickets appear at their mines, regardless of from whence they come, their identities, or the equity or lack thereof of their cause. Thus is the stage set for a handful of men to create havoc and industrial anarchy in the bituminous coal industry.

BCOA does not believe in nor advocate the settlement of labor disputes in the courts. BCOA encourages the settlement of disputes by the grievance-arbitration procedures of the agreement. BCOA is aware that some miners in West Virginia have attacked the courts and have attacked the industry for taking court action against wildcat strikes. BCOA can only say that these attacks are unwarranted and based on distorted reasoning. In the bituminous coal industry, until the coal miners accept it, the grievance-arbitration system, as experience has shown, will not work without the aid of the courts. BCOA members only have gone to the courts in order to attempt to channel arbitrable issues away from the picket line and into the peaceful procedures which were mutually agreed upon between BCOA and the UMWA. Recourse to the courts to preserve the integrity of the agreement has always been a last resort. But it is at times a necessary one. Without the courts, resort to arbitration will be volun-

tary, although written as mandatory; and wildcat strikes will go unchecked until they destroy the integrity of the national agreement which all parties have pledged to uphold, and undermine the stability of employment and production in the bituminous coal industry.

Because of its direct and overriding interest in improving labor relations, promoting labor peace, insuring stability of employment, and encouraging respect for the agreement, BCOA files this brief to respectfully bring to the attention of this Court the scope and seriousness of the issues which are here brought before it.

Without intent to overstate, BCOA believes that the future stability of labor relations and employment in the bituminous coal industry, the future of the United Mine Workers, and the future of the concept of a national labor agreement, will, to a large extent, depend upon the ultimate resolution of the issues here presented.

The Nature of Wildcat Strikes in the Coal Industry

Wildcat strikes typically start with a strike at a mine over some grievance or dispute which is clearly arbitrable under the national agreement. The local union, or a union member, chooses not to arbitrate and goes on strike. One or more men walk out and the others blindly follow. The mine is then on strike. Unless the strike is spread by roving pickets, the single mine strike normally lasts a day or two and the men return to work. Several wildcat strikes like these occur without fail nearly every day.

The second phase of a typical wildcat strike occurs when the strikers at the originating mine fan out and

picket out other mines. They do not picket openly, but covertly. They do not carry signs or proclaim their cause. They do not picket in the customary sense. They come to a mine in roving caravans, shut it down, and move on to another mine, returning later, if necessary, to shut it down again. Their tactics are successful largely because of the miners' tradition of ceasing work when a "picket" appears at their mines. Fear also plays its part. It is common practice for the miners at a mine closed by roving pickets to in turn picket out neighboring mines so that there is a growing momentum and a snow-balling effect. This explains why in the current work stoppage (August 1976) fewer than 200 miners at one mine of Cedar Coal in Boone County, West Virginia, did, within a few days, cause the shutdown of most of the bituminous coal mines in the seven bituminous coal producing states and idled over 100,000 miners.

We now turn to a discussion of the case presently before this Court.

QUESTION PRESENTED

BCOA adopts the statement of the question presented in the Windsor Power response to the Petition for a Writ of Certiorari.

Perhaps more simply stated the question is:

Whether a wildcat strike in the bituminous coal industry—precipitated over an arbitrable issue—is enjoinable against all local unions participating in the strike where all local unions and their members have a direct interest in the underlying arbitrable dispute by reason of the existence of a single multi-employer unit and multi-employer contract containing terms and provisions common to all.

STATEMENT OF THE CASE

Shortly after the 1974 Agreement was executed in December 1974, a dispute arose between North American Coal Corporation, a member of BCOA, and the UMWA over the meaning and application of the "Helper Clause" in the 1974 Agreement. This provision was new in the 1974 Agreement and appears in Article V. It provides, in effect, for the employment of helpers on certain mining machines and equipment.

North American and the Union disagreed on the meaning of this provision as applied to a machine called a "Roof Bolter." When the dispute could not be resolved through the grievance procedure, the Union, rather than arbitrate the issue, went on strike.

When the North American locals went on strike, they sent out pickets to the mines of other companies and shut them down as well.

One of these mines was the Beech Bottom Mine of Windsor Power House Coal Company. When the pickets showed up at the Beech Bottom Mine, the miners at that mine failed to show up for work. The pickets did not identify themselves and neither the Beech Bottom local nor the UMWA District made any effort to identify them or to determine who they were or why they were picketing. Union members testified that the Beech Bottom miners were simply following a tradition of not crossing a picket line. Other witnesses testified that they refrained from work because of fear of violence. Another union witness testified that he thought the pickets were college students. The essential element of *Buffalo Forge* of a "sympathy" strike was not present.

Under the facts, and after a full hearing, the District Court issued a preliminary injunction under *Boys Markets* which was upheld by the Fourth Circuit Court of Appeals.

The Union petitioned for review and Windsor Power joined in the Petition. BCOA joins in the request that the Court grant the Writ.

REASONS FOR GRANTING THE WRIT

BCOA joins in the Petition for a Writ because it strongly urges the Court to review this case and clarify *Buffalo Forge* as it applies to this recurring type of wildcat strike in the bituminous coal industry. The issue is one of national importance. An expeditious resolution is imperative in the national interest.

Unlike other unionized industries where wildcat strikes are a rarity, the coal industry has become increasingly victimized by wildcat strikes arising over arbitrable disputes. This is despite the fact that the national agreement has one of the broadest and most available grievance-arbitration procedures in existence. Every contract dispute and "local trouble" of any kind is subject to grievance-arbitration. Moreover, as already stated, the 1974 Agreement provides for a national Arbitration Review Board to reconcile differences between panel arbitrators as to the meaning and interpretation of the national agreement.

By and large, the UMWA members observe and follow this procedure. But, on occasion, employees at a particular mine spurn these arbitration procedures and resort to economic force to gain their demands. When this happens, a few recalcitrant men are able to spread the wildcat strike to other locals and to

shut down an entire UMWA District, or an entire state, and even the entire bituminous coal industry.

The result has been disastrous. There have been regularly recurring wildcat strikes in the coal industry, and they have been escalating. It is not an overstatement to say that we are nearing industrial anarchy in the coal fields.

The ink was hardly dry on *Buffalo Forge*, which was issued on July 6, when on July 19, a strike broke out in West Virginia over a grievance that was both arbitrable and arbitrated. The Union did not like the result and, by the use of roving pickets, shut down practically the entire industry for four weeks. The costs to all concerned were enormous and irremediable. Yet, for the most part, District Judges, overreacting to *Buffalo Forge*, refused either to issue or to enforce injunctions.

While this strike eventually will end, there can be no doubt that similar destructive stoppages will recur at frequent intervals and, if experience in recent years is any guide, they will escalate.

As previously stated, in 1975, approximately 16 million tons of production were lost due to wildcat strikes, and 1976 will exceed these losses. The loss of wages to miners is disastrous; and the Benefit and Pension Funds for miners have suffered grave losses which now pose an immediate threat to their financial stability, and to the health and pension benefits of current and retired miners.

The International Union has proven itself incapable or unwilling to take effective action to stem this tide.

The fact is that only the courts can provide a remedy. BCOA does not believe that the Court in *Buffalo Forge* intended to grant to a few willful men a roving license to destroy the bituminous coal industry, the coal miners, their Union, and to endanger the public welfare.

A. Boys Markets Not Buffalo Forge Should Control the Equitable Right to Injunctions Against Wildcat Strikes in the Coal Industry

1. The Court in Buffalo Forge reaffirmed rather than overruled Boys Market

Some of the district courts appear to have construed *Buffalo Forge* as overruling *Boys Markets*. This is not the case. *Buffalo Forge* reaffirmed the basic thrust of *Boys Markets* which endorses the use of the Federal Courts to uphold the sanctity of the arbitration process.

Buffalo Forge simply holds that where there is no underlying arbitrable dispute which is being undermined by a sympathy strike, *Boys Markets* does not apply.

There was no underlying arbitrable dispute in *Buffalo Forge*. In that case, there were two separate local unions representing two separate groups of employees in two separate bargaining units. One had its own separate contract and the other was negotiating one. The dispute over the negotiation of an agreement was not arbitrable and the union striking in sympathy had no arbitrable dispute other than the sympathy strike itself.

Thus, there was no underlying arbitrable issue of any kind, and the majority held that for this reason the integrity of the arbitration process was not undermined or endangered by the sympathy strike.

Here, the strike started and spread over an arbitrable dispute. Since the original strike at the originating mine was arbitrable, the spread of the strike was designed solely for the purpose of increasing the pressure on the industry to yield. This undermined and threatened the integrity of the arbitration procedure, and was therefore enjoinable against all participating locals.

2. The original precipitating strike in Buffalo Forge was primarily a legal strike, whereas here the original precipitating strike was in derogation of the arbitration procedure and enjoinable

The original strike in *Buffalo Forge* was a legal strike, not over an arbitrable issue, and therefore not enjoinable. Just the opposite was true here. The original precipitating strike was in derogation of the arbitration process and enjoinable. It would defy all logic and commonsense to hold that where the original strike is enjoinable under *Boys Markets*, a strike in support of the unlawful enjoinable strike is itself lawful and unenjoinable. Both are equally in opposition to the national policy favoring the arbitration of disputes.

In *Buffalo Forge*, the Court stated:

"... The District Court found, and it is not now disputed, that the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between

the employer and respondents. *The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain.*" (emphasis added)

The situation presented here is wholly distinguishable from *Buffalo Forge*. Overriding all else, the essential difference between *Buffalo Forge* and this case is the one emphasized by the Supreme Court in the above quote from the majority opinion. In *Buffalo Forge*, the strike had neither the purpose nor effect of evading an obligation to arbitrate or of depriving the employer of his bargain. In this case, that was the whole purpose of the strike and the accompanying picketing. That conclusion flows so patently from the facts that there is no possible basis for refuting it.

3. The more widespread the strike the greater the injury to the arbitration process

It is obvious that the strikers were, willy-nilly, supporting a massive assault on the arbitration process. To hold that such a widespread strike immunizes the local union from *Boys Markets* is purely and simply to condone mass lawlessness.

4. There was no "sympathy" strike here because all local unions and their members had a common and direct interest in the outcome of the dispute

A sympathy strike, as Justice Stevens said in *Buffalo Forge*, "does not directly further the economic interests of the members of the striking union or contribute to the resolution of any dispute between that local, or its members, and the employer." Slip Opinion, p. 17.

The NLRB has held that BCOA constitutes a single multi-employer bargaining unit, 179 NLRB 479 (1969). There is also a single national agreement with uniform terms and conditions.

Given the existence of a single agreement in a single multi-employer bargaining unit, and an arbitration procedure designed to insure conformity of interpretation and application, BCOA submits that all members of the Union employed by members of BCOA are mutually bound to abide by the common grievance-arbitration procedures. In this unitary relationship, the concept of a sympathy strike does not exist. The term "sympathy strike" connotes separateness of unions, separateness of bargaining units, and separateness of employee interests. That is not the situation here. All coal miners under BCOA's national agreement with the UMW have a direct and common interest in all disputes involving the interpretation and application of the national agreement. When any of them initiates a strike over an interpretation of the agreement, and others go out in support of the original union's demands, they are all, in truth and in fact, striking over a dispute in which they all have a common interest.

B. The Footnote Reference in *Buffalo Forge* to *Armco Steel* and Other Appellant Court Decisions Was Not Intended to Bar Injunctions Against Wildcat Strikes

A question may arise as to footnote 10 in the Majority Opinion in *Buffalo Forge*. But this footnote must be read with care. It has only a narrow application. What it states is that to the extent that this and other Courts of Appeals have assumed that a mandatory arbitration clause implies a commitment not to engage in "sympathy" strikes, they are wrong.

This statement is carefully drawn. It does not say that *Boys Markets* injunctions can no longer be issued against wildcat strikes in the coal industry. It does not state that the decisions of the Appellate Courts upholding such injunctions were necessarily wrong. These decisions were only declared to be wrong to the extent that the Appellate Courts may have assumed that there was an implied commitment not to engage in *sympathy strikes*. In the same term in which the Supreme Court granted review and decided *Buffalo Forge*, the Court denied *certiorari* in both *Island Creek v. UMWA*, and *Armco Steel v. UMWA*, 423 U.S. 877 (1975), allowing to stand the decision of the lower courts upholding the issuance of injunctions against wildcat strikes in the coal industry.

In our opinion, footnote 10 is not applicable to this case for the reason that, as we have shown, what this Court has before it is not a sympathy strike within the meaning of *Buffalo Forge*. Because of the unity of contract and the commonality of interests among UMWA members, and their direct and continuing interest in the underlying dispute, the members of the Beech Bottom local have an equally direct interest in this dispute, as did the North American locals where the dispute was first precipitated.

This strike was not a sympathy strike by a sister union supporting another union which was striking over contract negotiations for its own separate agreement, or engaging in any other legal primary strike. This strike was part of a coordinated effort to force upon Windsor Power, and in consequence upon all companies party to the national agreement, the union's interpretation of a substantive contract provision common to all UMWA members and to all BCOA com-

panies. Viewed in this correct light, all participating locals were combined in striking to evade their obligation to arbitrate the dispute.

CONCLUSION

For the above reasons, BCOA supports the Appeals of Windsor Power House Coal Company, and urgently requests the Court to grant the Writ so that the application of *Buffalo Forge* to wildcat strikes in the coal industry may be expeditiously clarified.

Respectfully submitted,

GUY FARMER

Farmer, Shibley, McGuinn & Flood
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

(202) 331-7311

*Attorney for Bituminous Coal
Operators' Association, Inc.*

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